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09/973,976	10/09/2001	William L. Thomas	UV-207	9820

7590 11/17/2005  
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EXAMINER

O'STEEN, DAVID R

ART UNIT	PAPER NUMBER
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2617

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/973,976

Applicant(s)

THOMAS ET AL.

Examiner

David R. O'Steen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10-09-2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-108 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-27, 30-45, 48-63, 66-81, 84-99 and 102-108 is/are rejected.
- 7) ☒ Claim(s) 10, 11, 28, 29, 46, 47, 64, 65, 82, 83, 100 and 101 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10-9-2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                                        | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed October 9, 2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, a copy of the Japanese Patent Abstract No. JP10 065978 was not submitted and, therefore, was not considered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 13, 14, 37, 38, 49, 50, 73, 85, and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (US 5,822,530). As regards Claims 1, 37, and 73, Brown discloses a method, system, and computer program product for managing the distribution of on-demand media using an interactive television application, comprising: receiving a request for on-demand media from a user (col. 2 lines 46-51) wherein the on-demand media is associated with a suggested bandwidth; determining an available bandwidth that is available for the transmission of the on-demand media; comparing the suggested bandwidth to the available bandwidth at a

television distribution facility; and providing an option for the transmission of the on-demand media to the user that is based at least partially on the comparison of the suggested bandwidth to the available bandwidth (col. 2, lines 51-62). The examiner understands that providing an option for the transmission of the on-demand media to the user that is based at least partially on the comparison of the suggested bandwidth to the available bandwidth is equivalent to directing the user to a NVOD presentation of the media if the interactive cable television system is unable to support the required bandwidth of the VOD broadcast.

4. As regards Claims 2, 38, and 74 Brown further discloses that receiving the request comprises receiving the request for real-time transmission of the on-demand data (col. 6, lines 9-17).

5. As regards Claims 13, 49, and 85, Brown discloses comparing the suggested bandwidth to the available bandwidth comprises determining that the available bandwidth is greater than or equal to the suggested bandwidth (col. 3, lines 63-66).

6. As regards Claims 14, 50, and 86, Brown further discloses comparing the suggested bandwidth to the available bandwidth comprises determining that the available bandwidth is less than the suggested bandwidth (cols. 3 and 4, lines 66-67 and 1-4).

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 30, 31, 37, 66, 67, 72, 102, and 103 are rejected under 35 U.S.C. 102(e) as being anticipated by Haddad (US 2005/0097619). As regards Claims 30, 66, and 102, Haddad discloses a method, system, and computer program product for managing the distribution of on-demand media using an interactive television application (paragraph 11, lines 5-7), comprising: receiving a request for transmission of on-demand media to a recording device from a user wherein the request for transmission is received at a television distribution facility (paragraph 47, lines 1-5); receiving a request for completion of the transmission of the on-demand media to the recording device by a scheduled time from the user wherein the request for completion of the transmission is received at a television distribution facility (paragraph 13, lines 1-10); and transmitting the on-demand media to the recording device wherein the transmission is completed by the scheduled time (paragraph 15, lines 1-4).

9. As regards Claims 31, 67, and 103 Haddad discloses receiving the request for completion of the transmission of the on-demand media to the recording device by the scheduled time comprises basing a price for the transmission on the scheduled time (paragraph 13, lines 24-28).

10. As regards Claims 37, 72, and 108, Claims 37, 72, and 108 are inherent in Claims 31, 66, and 102. A video broadcast is transmitted as a series of frames, where each frame could be understood as a section. Haddad already discloses transmitting the on-demand media to the recording device (paragraph 15, lines 1-4).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3, 15, 17, 18, 22, 23, 24, 25, 39, 51, 53, 54, 58, 59, 60, 61, 62, 75, 87, 89, 90, 94, 95, 96, 97, and 98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,822,530) in view of Haddad (US 2005/0097619). As regards Claims 3, 39, and 75, Brown discloses Claims 1, 37, and 73 but does not disclose receiving the request comprises receiving the request for transmission of the on-demand media at a future time. Haddad discloses that receiving the request comprises receiving the request for transmission of the on-demand media at a future time (paragraph 13, lines 3-10).

13. Brown and Haddad are analogous art because they both come from the same field of endeavor, Video on Demand.

14. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the time transmission of Haddad with the VOD system of Brown because allowing the user to set a time in advance to watch the video allows for the VOD provider to better manage the transfer load of the network.

15. As regards Claim 15, 51, and 87, Haddad further discloses providing the option for the transmission of the on-demand media comprises providing the user with the ability to schedule a time for the transmission of the on-demand media to the user

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(paragraph 3, lines 1-10). It is understood by the examiner that allowing the user to schedule a time for transmission is equivalent to allowing the user to schedule a time interval for transmission.

16. As regards Claims 17, 53, and 89, Haddad further discloses providing the user with the ability to schedule the time for the transmission of the on-demand media comprises basing a price for the transmission of the on-demand media on the scheduled time (paragraph 13, lines 24-28).

17. As regards Claim 18, 54, and 90, Haddad further discloses that providing the option for the real-time transmission of the on-demand media comprises recommending a time to the user for the transmission of the on-demand media to the user (paragraph 13, lines 24-28). It is understood by the examiner that recommending a time for transmission is equivalent to encouraging distribution during certain hours.

18. As regards Claims 22, 58, and 94, Haddad further discloses that providing the option for the transmission of the on-demand media comprises providing the option to transmit the on-demand media to a recording device for the presentation to the user at a scheduled time (paragraphs 13 and 15, lines 19-23 and 1-4).

19. As regards Claims 23, 59, and 95 Haddad further provides the option to transmit the on-demand media to the recording device for the presentation to the user at the scheduled time comprises basing the price for the transmission of the on-demand media to the recording device on the scheduled time (paragraph 13 lines 13-28).

20. As regards Claims 24, 60, and 96, Brown further discloses that transmitting the on-demand media in a plurality of sections wherein each section is transmitted at the suggested bandwidth (col. 3, 63-66).

21. As regards Claims 25, 61, and 97, Brown further discloses further transmitting the on-demand media in a plurality of sections and wherein at least one of the plurality of sections has a bandwidth that is different than the suggested bandwidth (cols. 3 and 4, lines 66-67 and 1-4). On-demand media is transmitted as a series of frames where each frame could be understood as its own section. In the case of Brown, when there is not sufficient bandwidth for the VOD presentation, all sections are transmitted at a bandwidth that is different than the suggested bandwidth

22. As regards Claims 26, 62, and 98, Brown further discloses comprising transmitting the on-demand media at a bandwidth that is different than the suggested bandwidth (cols. 3 and 4, lines 66-67 and 1-4). It is assumed that VOD presentation of the media in Brown is broadcast at the suggested bandwidth and the NVOD presentation is at a different bandwidth.

23. Claims 5, 6, 7, 8, 41, 42, 43, 44, 77, 78, 79, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,822,530) in view of Schumacher (US 6,757,907). As regards Claims 5, 41, and 77, Brown discloses the content of Claims 1, 37, and 73 but does not disclose presenting the suggested bandwidth to the user. Schumacher discloses presenting the suggested bandwidth to the user (fig. 2.221).

24. Brown and Schumacher are analogous art because they both come from the same field of endeavor, Video on Demand.



25. At the time of the invention, it would have been obvious to a person of ordinary skill that in the art to combine the bandwidth display of Schumacher with the VOD system of Brown because it allows the user to know how much of the network's resources he is using.

26. As regards Claims 6, 42, and 78, Schumacher further discloses presenting the suggested bandwidth to the user comprises displaying the suggested bandwidth on a display (fig. 2.221).

27. As regards Claims 7, 43, and 79, Schumacher further discloses presenting the suggested bandwidth to the user comprises displaying a graphical representation of the suggested bandwidth on a display (fig. 2.221).

28. As regards Claims 8, 44, and 80, the examiner takes official notice that presenting the suggested bandwidth audibly is an obvious variation on presenting the suggested bandwidth graphically, as in Schumacher (fig. 2.221). Audibly presenting the bandwidth to the user could be used to improve the experience of the visually impaired.

29. Claims 9, 12, 45, 48, 81, and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,822,530). As regards Claims 9, 45, and 81, Brown discloses the contents of Claims 1, 37, and 73. Moreover, Brown discloses presenting the available bandwidth to the user (col. 6, lines 9-26). It is obvious to anyone skilled in the art at the time of invention that presenting the user with a choice of watching an NVOD presentation when there is not enough bandwidth to present a VOD presentation is equivalent to presenting the available bandwidth to the user. Also, the same is true, when it is possible to present the VOD presentation when the user requests it, that it is

equivalent to presenting the available bandwidth to the user when using the VOD system.

30. As regards Claims 12, 48, and 84, Brown discloses the contents of Claims 9, 45, and 81. The examiner takes official notice that presenting the available bandwidth audibly is an obvious variation on presenting the available bandwidth graphically. Audibly presenting the bandwidth to the user could be used to improve the experience of the visually impaired when using the VOD system.

31. Claims 16, 52, and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,822,530) in view of Haddad (US 2005/0097619) and Schumacher (US 6,757,907). Brown and Haddad jointly disclose Claims 15, 51, and 87. However, they do not disclose providing the user with an ability to request a version of the on-demand media having a reduced bandwidth. Schumacher discloses providing the user with an ability to request a version of the on-demand media having a reduced bandwidth (fig. 2.221). It is understood that if there are two bandwidths available, one must be smaller than the other and so reduced as compared to the other.

32. Brown, Haddad, and Schumacher are analogous art because they both come from the same field of endeavor, Video on Demand.

33. At the time of the invention, it would have been obvious to a person of ordinary skill that in the art to combine the bandwidth display of Schumacher with the VOD system of Brown and Haddad because it allows the user to choose how much of the network's resources he is using.

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34. Claims 4, 19, 20, 21, 40, 55, 56, 57, 76, 91, 92, and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,822,530) in view of Shah-Nazaroff (US 6,157,377). As regards Claims 4, 40, and 76, Brown discloses the contents of claims 1, 37, and 73. He does not disclose receiving the request for on-demand media that is selected from the group consisting of an audio selection, a video selection, an electronic publication, an electronic game, a software application, and any combination thereof. Shah-Nazaroff discloses receiving the request for on-demand media that is selected from the group consisting of an audio selection, a video selection, an electronic publication, an electronic game, a software application, and any combination thereof (fig. 5).

35. Brown and Shah-Nazaroff are analogous art because they both come from the same field of endeavor, Video on Demand.

36. At the time of the invention, it would have been obvious to a person of ordinary skill that in the art to combine the available time slots display of Shah-Nazaroff with the VOD system of Brown because it allows the user to easily choose when he will watch the media.

37. Shah-Nazaroff does disclose providing the option of the on-demand media comprises presenting a general trend to the user of available time slots for the transmitting on-demand media in response to user requests (fig. 5). In this case, the general trend to the user of available time slots is that of once every 2 hours.

38. As regards Claims 20, 56, and 92, Shah-Nazaroff further discloses providing the option for the transmission of the on-demand media comprises providing the user with

an ability to request a version of the on-demand media having a reduced bandwidth (fig 5).

39. As regards Claims 21, 57, and 93, Shah-Nazaroff further discloses providing the user with the ability to request the version of the on-demand media having the reduced bandwidth comprises basing a price for the transmission of the on-demand media on the reduced bandwidth (fig. 5).

40. Claims 27, 63, and 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,822,530) in view of Haddad (US 2005/0097619) and Shah-Nazaroff (US 6,157,377). Brown and Haddad jointly disclose Claims 22, 58, and 94, but do not disclose providing an option to transmit the on-demand media to the recording device for presentation to the user at the scheduled time comprises basing a price for the transmission of the on-demand media on the available bandwidth. Shah-Nazaroff discloses providing an option to transmit the on-demand media to the recording device for presentation to the user at the scheduled time comprises basing a price for the transmission of the on-demand media on the available bandwidth (fig. 5).

41. Brown, Haddad, and Shah-Nazaroff are analogous art because they both come from the same field of endeavor, Video on Demand.

42. At the time of the invention, it would have been obvious to a person of ordinary skill that in the art to combine the pricing scheme for bandwidth of Shah-Nazaroff with the VOD system of Brown and Haddad because it allows the user to easily choose the quality of picture for the transmission.

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43. Claims 32, 33, 34, 35, 68, 69, 70, 104, 105, 106, and 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad (US 2005/0097619) in view of Shah-Nazaroff (US 6,157,377). As regards Claims 32, 68, and 104, Haddad discloses Claims 30, 66, and 102, however, he does not disclose receiving the request for on-demand media that is selected from the group consisting of an audio selection, a video selection, an electronic publication, an electronic game, a software application, and any combination thereof. Shah-Nazaroff discloses receiving the request for on-demand media that is selected from the group consisting of an audio selection, a video selection, an electronic publication, an electronic game, a software application, and any combination thereof (figure 5).

44. Haddad, and Shah-Nazaroff are analogous art because they both come from the same field of endeavor, Video on Demand.

45. At the time of the invention, it would have been obvious to a person of ordinary skill that in the art to combine the pricing scheme for bandwidth and scheduling of Shah-Nazaroff with the VOD system of Haddad because it allows the user to easily choose the quality of picture and time for the transmission.

46. As regards Claims 33, 69, and 105, Shah-Nazaroff further discloses presenting a general trend to the user of available time slots for transmitting on-demand media to recording devices in response to user requests (fig. 5). In the case of figure 5 of Shah-Nazaroff, general trend to the user of available time slots is once every 2 hours.

47. As regards Claims 34, 70, and 106, Shah-Nazaroff further discloses that the on-demand media is associated with a suggested bandwidth for a real-time transmission of

the on-demand media to the user (fig. 5). In this case, the suggested bandwidth is labeled default.

48. As regards Claims 35, 71, and 107, Shah-Nazaroff further discloses transmitting the on-demand media to the recording device comprises transmitting the on-demand media at a bandwidth that is different than the suggested bandwidth (fig. 5). In this case, examples from figure 5 include transmitting at "good" or "excellent" quality.

#### ***Allowable Subject Matter***

49. Claims 10, 11, 28, 29, 46, 47, 64, 65, 82, 83, 100, and 101 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

50. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lewis (US 2005/0198677) discloses an interactive television device that allows the user to purchase movies, music, and ebooks among other things. Lewis also discloses downloading a movie to a recording device. Ueno (US 6,438,596) discloses a VOD system that dynamically presents the user with a set of videos which it is able to immediately broadcast. Ueno (US 6,185,736) discloses a cable system which attempts to broadcast certain content only if there are adequate resources. Rakib (US 6,857,132) and Jerding (US 2005/0044577) disclose a robust VOD system with Internet accessibility. Tsevdos (US 5,734,719) discloses a digital media kiosk capable of accessing content off a server. Hanai (US 2005/0198671) discloses a device that


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couples a recording system with a cable system and an EPG. Brown (US 5,805,154) discloses an invention that couples an on-demand application delivery service with a cable system. Giammaressi (US 2003/0061619) discloses an on-demand system that checks available bandwidth and sends the highest bandwidth transmission possible. Brown (US 5,771,435) discloses a device that provides an NVOD version of an application when the system does not have enough broadband to support the VOD version. Hindus (US 2001/0037508) discloses a bi-directional communications system where the user can choose the bandwidth of the channel he is using.

51. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R. O'Steen whose telephone number is 571-272-7931. The examiner can normally be reached on 8:30 to 5.

52. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

53. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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